

Senate Bill No. 1408

CHAPTER 794

An act to add Sections 1102, 1144, 1146, 1156.7, 1176.5, 1177.5, 1178.5, 1196.4, and 1196.5 to the Harbors and Navigation Code, and to amend Section 1808.1 of the Vehicle Code, relating to bar pilots.

[Approved by Governor September 29, 2012. Filed with
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LEGISLATIVE COUNSEL'S DIGEST

SB 1408, Blakeslee. Bar pilots: Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun.

Existing law provides for the regulation and licensing of pilots for Monterey Bay, and the Bays of San Francisco, San Pablo, and Suisun, and the payment of specified pilotage rates and charges imposed on vessels piloted in those bays. Existing law also establishes in the Business, Transportation and Housing Agency, a Board of Pilot Commissioners for Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun, and prescribes the membership, functions, and duties of the board.

Existing law requires the pilots to appoint a port agent to carry out the orders of the board, other applicable laws, and otherwise administer the affairs of the pilots.

This bill would require a pilot to refuse a pilotage assignment if the pilot is physically or mentally fatigued and the pilot has a reasonable belief that the assignment cannot be carried out in a competent and safe manner. The bill would require the executive director of the board, if the executive director alerts the United States Coast Guard to a violation or a likely violation of safety standards and has reason to believe the violation or likely violation will not be corrected prior to reaching its next port of call, to request that the United States Coast Guard report specified vessel pilot safety violations to the port state control officer or a pilot organization in a vessel's expected future port of call.

The bill would require the board to contract with an independent entity to conduct a study of the effects of work and rest periods on psychological ability and safety for pilots, including specified information and recommendations on how to prevent pilot fatigue and ensure the safe operation of vessels and, based on the results of, and recommendations contained in the study, to promulgate regulations for pilots establishing requirements for adequate rest periods intended to prevent pilot fatigue.

Existing law provides that the board shall have sole authority to determine the qualification for obtaining a pilot's license, and requires the board to adopt, by regulation, licensing standards that equal or exceed standards for obtaining federal endorsements that conform with and support state policy

with regard to the safe operation of vessels. Existing law requires that an applicant for a pilot trainee position, or for a pilot license, or a pilot seeking renewal of his or her license to undergo a physical examination by a board-appointed physician, in accordance with prescribed standards, to determine the suitability of a person to perform his or her duties as a pilot.

This bill would require a pilot trainee or an applicant for a trainee position, a license applicant, or a licensee applying for renewal of a license to disclose to the board-appointed physician conducting the required physical examination certain medical information relating to the applicant's or licensee's ability to safely operate a vessel, including information concerning prior substance abuse and medical conditions characterized by lapses of consciousness. The bill would authorize the board to refuse to admit an applicant to a training program, continue a trainee in the training program, or issue or renew a license to any person when the board-appointed physician conducting the physical examination determines that the applicant or licensee habitually uses, or is addicted to, alcoholic beverages, narcotics, or dangerous drugs, and would prescribe procedures the board would be required to follow with regard to the refusal to issue or renew a license.

Existing law requires the board to adopt training standards and a training program for pilot trainees, and continuing education standards and a continuous education program for pilots.

This bill would require that any continuing education program adopted by the board regularly inform pilots of the hazards of fatigue and of effective strategies to prevent fatigue.

Existing law requires the prospective employer of a driver who drives a vehicle, as specified, to obtain a report showing the driver's current public record as recorded by the Department of Motor Vehicles, and requires the employer of a driver of such a vehicle to participate in a pull-notice system, as defined. Existing law requires that a request to participate in the pull-notice system be accompanied by a fee determined by the department to be sufficient to defray the entire actual cost to the department for the notification system, subject to specified fee exemptions.

This bill would require that the board also comply with the above provisions of the Vehicle Code requiring participation in the pull-notice system and establishing the fee for the system, but would specify that all pilots and pilot trainees covered by those provisions would not be subject to the fees imposed by the department for the pull-notice system. The bill would also require the board, on an individual basis, to request the driving record of every applicant for admission to the pilot training program, and of every applicant for an original pilot license before issuing the applicant a pilot license.

The people of the State of California do enact as follows:

SECTION 1. Section 1102 is added to the Harbors and Navigation Code, to read:

1102. The Legislature finds and declares that the enhancement of navigational safety is of the utmost concern in state pilotage. In order to ensure and promote the highest level of safety in pilotage, the board is empowered to effectively monitor and oversee the practices of pilots and prevent fatigue resulting from extended hours of service, insufficient rest within a 24-hour period, and disruption of circadian rhythms.

SEC. 2. Section 1144 is added to the Harbors and Navigation Code, to read:

1144. Any continuing education program adopted by the board shall regularly inform pilots of the hazards of fatigue and of effective strategies to prevent fatigue while on duty.

SEC. 3. Section 1146 is added to the Harbors and Navigation Code, to read:

1146. A pilot shall refuse a pilotage assignment if he or she is physically or mentally fatigued and has a reasonable belief that the assignment cannot be carried out in a competent and safe manner.

SEC. 4. Section 1156.7 is added to the Harbors and Navigation Code, to read:

1156.7. If the executive director of the board alerts the United States Coast Guard to a violation or likely violation of safety standards pursuant to Section 1156.6 and has reason to believe that the violation or likely violation will not be corrected prior to the vessel reaching its next port of call, the executive director shall request the United States Coast Guard to report the suspected safety standard violation to the port state control officer or a pilot organization in an expected future port of call. This section does not preclude any other party from disseminating any report of the findings and recommendations of the executive director of the board pursuant to Section 1156.6, and all of those reports and findings shall be considered public records.

SEC. 5. Section 1176.5 is added to the Harbors and Navigation Code, to read:

1176.5. (a) At the time of the physical examination required by Section 1176, a trainee or an applicant for a trainee position shall disclose to the board-appointed physician conducting the physical examination all of the following information, if applicable:

(1) If at any time prior to the examination the trainee or applicant for a trainee position has been rendered incapable of safely operating a vessel or any other motor vehicle because of alcoholism, excessive and chronic use of alcoholic beverages, or addiction to, or habitual use of, any drug.

(2) If at any time prior to the examination the trainee or applicant for a trainee position has been addicted to the use of narcotic drugs or has participated in a narcotic treatment program.

(3) If at any time prior to the examination the trainee or applicant for a trainee position has suffered from a disorder characterized by lapses of consciousness or has experienced, within the last three years, either a lapse of consciousness or an episode of marked confusion caused by any medical condition that may bring about recurrent lapses, or has any physical or

mental disability, disease, or disorder that could affect the safe operation of a vessel or motor vehicle.

(b) At the time of the physical examination, a licensee shall disclose to the board-appointed physician conducting the physical examination pursuant to Section 1176 all of the following information, if applicable:

(1) If at any time during the year prior to the examination the licensee applicant has been rendered incapable of safely operating a vessel or any other motor vehicle because of alcoholism, excessive and chronic use of alcoholic beverages, or addiction to, or habitual use of, any drug.

(2) If at any time during the year prior to the examination the licensee has been addicted to the use of narcotic drugs or participated in a narcotic treatment program.

(3) If at any time during the year prior to the examination the licensee has suffered from a disorder characterized by lapses of consciousness or has experienced either a lapse of consciousness or an episode of marked confusion caused by any medical condition that may bring about recurrent lapses, or has any physical or mental disability, disease, or disorder that could affect the safe operation of a vessel or any other motor vehicle.

(c) The board may refuse to admit an applicant to the training program, continue a trainee in the training program, or issue or renew a license to any person if the board-appointed physician conducting the physical examination required pursuant to Section 1176 determines that the trainee applicant, trainee, license applicant, or licensee excessively or habitually uses, or is addicted to, alcoholic beverages, narcotics, or dangerous drugs.

(d) The board shall not admit an applicant to the training program, continue a trainee in the program, issue a license to a pilot license applicant, or renew a pilot license for any applicant who fails to submit the information required by this section.

SEC. 6. Section 1177.5 is added to the Harbors and Navigation Code, to read:

1177.5. (a) The board's proceedings with regard to the refusal to issue or renew a pilot license shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The board may deny an application for a license without a hearing, if within one year previously, and after proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, an application from the same applicant has been denied upon the same grounds.

SEC. 7. Section 1178.5 is added to the Harbors and Navigation Code, to read:

1178.5. (a) Subject to this section, the board shall participate in a pull-notice system, pursuant to Section 1808.1 of the Vehicle Code, with respect to all pilot trainees and all licensees.

(b) The purpose of board participation in a pull-notice system pursuant to this section is to provide the board with a report showing each pilot's current public record as recorded by the Department of Motor Vehicles, and

any subsequent convictions, failures to appear, accidents, driver's license suspensions, driver's license revocations, or any other actions taken against the driving privilege or certificate, added to the driver's record while the notification request remains valid and uncanceled.

(c) As used in this section, participation in the pull-notice system means obtaining a requester code and enrolling all pilots and trainees who are subject to the board's jurisdiction under that requester code.

(d) The board shall, additionally, obtain a periodic report from the Department of Motor Vehicles at least every 12 months. The board shall verify that each pilot's and pilot trainee's driver's license has not been suspended or revoked and whether the pilot or pilot trainee has been convicted of a violation of Section 23152 or 23153 of the Vehicle Code or Section 655.

(e) Upon the termination of a pilot's license or the removal of a trainee from the training program, the board shall notify the Department of Motor Vehicles to discontinue the driver's enrollment in the pull-notice system.

(f) For the purposes of the pull-notice system, a pilot and pilot trainee shall be enrolled as if he or she were an employee of the board.

(g) The board shall be exempt from any fees required under the pull-notice system, pursuant to Section 1808.1 of the Vehicle Code.

(h) The board, on an individual basis, shall also request the driving record of every applicant for admission into the pilot training program before granting admission to the training program, and shall request the driving record of every applicant for an original pilot license before issuing a pilot license.

(i) The board, after notice and hearing, may refuse to issue a pilot license or may suspend or revoke the license issued to a pilot if that person has been convicted of a violation of Section 23152 or 23153 of the Vehicle Code, or Section 655. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(j) The board may refuse to admit an applicant into the pilot training program or may dismiss a pilot trainee from the pilot training program if that person has been convicted of a violation of Section 23152 or 23153 of the Vehicle Code or Section 655. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

SEC. 8. Section 1196.4 is added to the Harbors and Navigation Code, to read:

1196.4. (a) Costs resulting from the provision of continuing education for currently licensed pilots regarding instruction in the proper utilization of portable pilot unit equipment and software, if determined to be necessary for effectuating the purposes of continuing education by the board, shall be considered pilot continuing education expenses pursuant to Section 1196.3.

(b) Subdivision (a) shall apply only to those costs incurred after January 1, 2013.

SEC. 9. Section 1196.5 is added to the Harbors and Navigation Code, to read:

1196.5. (a) The board shall contract with an independent entity to conduct a study of the effects of work and rest periods on psychological ability and safety for pilots. The study shall evaluate sleep- and human-related factors for pilots, and shall include information and recommendations on how to prevent pilot fatigue and ensure the safe operation of vessels.

(b) The board shall, based on the results of, and recommendations contained in, the study, promulgate regulations for pilots establishing requirements for adequate rest periods intended to prevent pilot fatigue.

(c) The study required to be conducted pursuant to subdivision (a) shall be funded by revenues received by the board from the board operation surcharge, as described in Section 1159.2. The board shall have authority, consistent with Section 1159.2, to collect and appropriate adequate funding to ensure that the study is completed.

SEC. 10. Section 1808.1 of the Vehicle Code is amended to read:

1808.1. (a) The prospective employer of a driver who drives a vehicle specified in subdivision (k) shall obtain a report showing the driver's current public record as recorded by the department. For purposes of this subdivision, a report is current if it was issued less than 30 days prior to the date the employer employs the driver. The report shall be reviewed, signed, and dated by the employer and maintained at the employer's place of business until receipt of the pull-notice system report pursuant to subdivisions (b) and (c). These reports shall be presented upon request to an authorized representative of the Department of the California Highway Patrol during regular business hours.

(b) The employer of a driver who drives a vehicle specified in subdivision (k) shall participate in a pull-notice system, which is a process for the purpose of providing the employer with a report showing the driver's current public record as recorded by the department, and any subsequent convictions, failures to appear, accidents, driver's license suspensions, driver's license revocations, or any other actions taken against the driving privilege or certificate, added to the driver's record while the employer's notification request remains valid and uncanceled. As used in this section, participation in the pull-notice system means obtaining a requester code and enrolling all employed drivers who drive a vehicle specified in subdivision (k) under that requester code.

(c) The employer of a driver of a vehicle specified in subdivision (k) shall, additionally, obtain a periodic report from the department at least every 12 months. The employer shall verify that each employee's driver's license has not been suspended or revoked, the employee's traffic violation point count, and whether the employee has been convicted of a violation of Section 23152 or 23153. The report shall be signed and dated by the employer and maintained at the employer's principal place of business. The report shall be presented upon demand to an authorized representative of the Department of the California Highway Patrol during regular business hours.

(d) Upon the termination of a driver's employment, the employer shall notify the department to discontinue the driver's enrollment in the pull-notice system.

(e) For the purposes of the pull-notice system and periodic report process required by subdivisions (b) and (c), an owner, other than an owner-operator as defined in Section 34624, and an employer who drives a vehicle described in subdivision (k) shall be enrolled as if he or she were an employee. A family member and a volunteer driver who drives a vehicle described in subdivision (k) shall also be enrolled as if he or she were an employee.

(f) An employer who, after receiving a driving record pursuant to this section, employs or continues to employ as a driver a person against whom a disqualifying action has been taken regarding his or her driving privilege or required driver's certificate, is guilty of a public offense, and upon conviction thereof, shall be punished by confinement in a county jail for not more than six months, by a fine of not more than one thousand dollars (\$1,000), or by both that confinement and fine.

(g) As part of its inspection of bus maintenance facilities and terminals required at least once every 13 months pursuant to subdivision (c) of Section 34501, the Department of the California Highway Patrol shall determine whether each transit operator, as defined in Section 99210 of the Public Utilities Code, is then in compliance with this section and Section 12804.6, and shall certify each operator found to be in compliance. Funds shall not be allocated pursuant to Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code to a transit operator that the Department of the California Highway Patrol has not certified pursuant to this section.

(h) (1) A request to participate in the pull-notice system established by this section shall be accompanied by a fee determined by the department to be sufficient to defray the entire actual cost to the department for the notification service. For the receipt of subsequent reports, the employer shall also be charged a fee established by the department pursuant to Section 1811. An employer who qualifies pursuant to Section 1812 shall be exempt from any fee required pursuant to this section. Failure to pay the fee shall result in automatic cancellation of the employer's participation in the notification services.

(2) A regularly organized fire department, having official recognition of the city, county, city and county, or district in which the department is located, shall participate in the pull-notice program and shall not be subject to the fee established pursuant to this subdivision.

(3) The Board of Pilot Commissioners for Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun, and its port agent shall participate in the pull-notice system established by this section, subject to Section 1178.5 of the Harbors and Navigation Code, and shall not be subject to the fees established pursuant to this subdivision.

(i) The department, as soon as feasible, may establish an automatic procedure to provide the periodic reports to an employer by mail or via an

electronic delivery method, as required by subdivision (c), on a regular basis without the need for individual requests.

(j) (1) The employer of a driver who is employed as a casual driver is not required to enter that driver's name in the pull-notice system, as otherwise required by subdivision (a). However, the employer of a casual driver shall be in possession of a report of the driver's current public record as recorded by the department, prior to allowing a casual driver to drive a vehicle specified in subdivision (k). A report is current if it was issued less than six months prior to the date the employer employs the driver.

(2) For the purposes of this subdivision, a driver is employed as a casual driver when the employer has employed the driver less than 30 days during the preceding six months. "Casual driver" does not include a driver who operates a vehicle that requires a passenger transportation endorsement.

(k) This section applies to a vehicle for the operation of which the driver is required to have a class A or class B driver's license, a class C license with a hazardous materials endorsement, a class C license issued pursuant to Section 12814.7, or a certificate issued pursuant to Section 12517, 12519, 12520, 12523, 12523.5, or 12527, or a passenger vehicle having a seating capacity of not more than 10 persons, including the driver, operated for compensation by a charter-party carrier of passengers or passenger stage corporation pursuant to a certificate of public convenience and necessity or a permit issued by the Public Utilities Commission.

(l) This section shall not be construed to change the definition of "employer," "employee," or "independent contractor" for any purpose.

(m) A motor carrier who contracts with a person to drive a vehicle described in subdivision (k) that is owned by, or leased to, that motor carrier, shall be subject to subdivisions (a), (b), (c), (d), (f), (j), (k), and (l) and the employer obligations in those subdivisions.

(n) Reports issued pursuant to this section, but only those for a driver of a taxicab engaged in transportation services as described in subdivision (a) of Section 53075.5 of the Government Code, shall be presented upon request, during regular business hours, to an authorized representative of the administrative agency responsible for issuing permits to taxicab transportation services pursuant to Section 53075.5 of the Government Code.